

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

 UNITED STATES OF AMERICA

v.

JOHN J. DIAMONT, JR.

Defendant.

CRIMINAL NO. 05-10154-MLW

**DEFENDANT'S MOTION TO IMPOUND PORTIONS OF HIS MEMORANDUM IN
SUPPORT OF DEFENDANT'S MOTION FOR PRE-TRIAL SUBPOENAS**

Pursuant to Local Rule 7.2, defendant John Diamont moves to impound portions of his Memorandum in Support of Defendant John Diamont's Motion for Pre-Trial Subpoenas. In support of this Motion, Mr. Diamont states that this Memorandum contains information relating to his theory of the case. Under the attorney work product privilege, the Court may not require the defense to share with the government its theories of the case. Indeed, courts routinely allow criminal defendants to seek pre-trial subpoenas in *ex parte* applications based upon a concern that defendants seeking to establish their entitlement to pre-trial subpoenas may need to reveal their theory of the case and other privileged information. *E.g., United States v. Daniels*, 95 F. Supp. 2d 1160, 1163-64 (D. Kan. 2000); *United States v. Tomison*, 969 F. Supp. 587, 588-95 (E.D. Cal. 1997); *United States v. Beckford*, 964 F. Supp. 1010, 1025-31 (E.D. Va. 1997); *United States v. Reyes*, 162 F.R.D. 468, 470-71 (S.D.N.Y. 1995); *United States v. Jenkins*, 895 F. Supp. 1389, 1393 (D. Haw. 1995). Mr. Diamont is electronically filing a redacted version of this Memorandum, but he asks that the Court permit him to file the unredacted version of the Memorandum under seal. Should the Court deny this Motion to Impound, Mr. Diamont requests that the Court return the Memorandum to him rather than place it in the public file.

WHEREFORE, Mr. Diamont asks the Court to impound the unredacted version of his Memorandum in Support of his Motion for Pre-Trial Subpoenas and withhold this Memorandum from public inspection until further order of the Court.

Respectfully submitted,

JOHN DIAMONT

By his attorneys,

/s/ Lauren M. Papenhausen
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August 22, 2005

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)

Pursuant to Local Rule 7.1(A)(2), the undersigned counsel for defendant John Diamont hereby certifies that defense counsel have conferred with counsel for the government and have attempted in good faith to resolve or narrow the issue presented in this Motion.

/s/ Lauren M. Papenhausen